

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

United States District Court  
Southern District of Texas**ENTERED**

November 14, 2016

David J. Bradley, Clerk

Donald E. Railsback,

Plaintiff,

*versus*

Aetna, Inc.,

Defendant.

§  
§  
§  
§  
§  
§  
§  
§

Civil Action H-16-3055

### Opinion on Dismissal

Donald E Railsback sued Aetna, Inc., for negligence and breach of the duty of good faith and fair dealing. In 2013, his doctor noticed that his prostate was enlarged and his prostate-specific antigen levels were above normal. The doctor did not order a biopsy. Railsback did not receive, claim, or request approval for a biopsy that year. In 2014, the doctor ordered a biopsy and diagnosed him with prostate cancer. When Railsback filed the biopsy claim with his benefits program, it paid.

His health benefits are covered by the Texas Public School Retired Employees Group Benefits Program. Aetna Life Insurance Company administers this program. He sued Aetna, Inc., not Aetna Life. He sued on a contract between the program and Aetna Life. Because he is not a party to that contract or a third-party beneficiary of it, he cannot sue on it.

Even if Railsback had sued Aetna Life, his claims arise from the doctor's not ordering a biopsy. Neither Aetna Life nor the benefits plan would have known whether Railsback needed a biopsy. Neither decides who may have a biopsy at that point. They decide whether to pay for what the doctor ordered and the beneficiary had done and claimed.

The benefits program is funded by the state. It is entitled to state sovereign immunity. As administrator of the program, Aetna Life is immune, too.

Railsback has appeared without the assistance of counsel. After an hour-long conference with Aetna and him, no facts emerged that would support a case.

Railsback will take nothing from Aetna, Inc.

Signed on November 11, 2016, at Houston, Texas.

A handwritten signature in black ink, appearing to read 'L. Hughes', is written over a horizontal line.

Lynn N. Hughes  
United States District Judge